

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Joseph P. Vacanti, Christopher K. Breuer, Beverly E. Chaignaud,
and Toshiraru Shin'oka

Serial No.: 10/782,750

Group Art Unit: 3774

Filed: February 19, 2004

Examiner: David J. Isabella

For: *ENGINERRING OF STRONG, PLIABLE TISSUES*

Mail Stop-Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**PETITION FOR REVIVAL OF AN APPLICATION FOR
PATENT ABANDONED UNAVOIDABLE UNDER 37 C.F.R. § 1.137(b),
IN THE ALTERNATIVE, PETITION FOR REVIVAL OF AN
APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY
UNDER 37 C.F.R. § 1.137(b)**

Sir:

The above-identified application became abandoned on December 18, 2008. Applicants hereby petition for a revival of the above referenced application for the following reasons:

1. An Appeal Brief was filed December 8, 2006. An Office action was mailed February 8, 2007. The undersigned spoke with the examiner's supervisor on February 13, 2007, requesting reinstatement of the appeal on the basis there was no new ground of rejection in the office action.

2. At the request of the Supervisor, a response was filed May 8, 2007, formally

requesting reconsideration of the issues raised office action, and providing the analysis of the same references under the recently issued decision in KSR. No office action was issued in response to this response for **more than one year. On June 11, 2008, the undersigned called examiner David Isabella regarding the lack of action and also asked the director Fred Schmidt to review the case and advise why there had been no action.** The examiner stated he was just too busy to act on the case.

3. On June 18, 2008, an office finally rejecting the claims was mailed, again making no new grounds of rejection but rejecting the claims over the same art. A response was filed on September 18, 2008. Repeated phone calls were made to the examiner requesting action on the response. On November 18, 2008, the examiner said he was going to look at the response and immediately mail an action. Nothing was sent.

4. On December 29, 2008, a telephone call to the examiner confirmed that he had still not acted on the action filed September 18, 2008. A message was again left for the Director about the difficulties in getting the examiner to act on this case, and a divisional, in which a response was filed March 11, 2008, U.S.S.N. 11/529,691, which has still not been acted on.

5. The undersigned requested that the appeal be reinstated if the application was not allowed. A notice of appeal and appeal brief were previously timely filed in this case. The examiner has failed to act timely in the case. The claims remain rejected over the same art. The examiner has apparently failed to reinstate the appeal. Had the examiner acted in a timely manner, either an advisory action would have been received and the undersigned would have known the examiner failed to reinstate the appeal or the case would have been allowed, before

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the expiration of the deadline. The undersigned should not be held responsible for the examiner's failure to act in a timely fashion.

The fee for filing the Petition Under 37 C.F.R. § 1.137(b) for an Unavoidable Abandoned Application for a small entity is \$270.00. The Commissioner is authorized to charge the appropriate fee for this petition under 37 C.F.R. § 1.17(m) to Deposit Account No. 50-3129. However, should an additional fee be required, or if this petition is denied and must be considered as a Petition for Unintentional Abandonment, the Commissioner is hereby authorized to charge any additional fees for a small entity to Deposit Account No. 50-3129.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States

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Code, and that such willful false statements may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this verified statement is directed.

Respectfully submitted,

/Patrea L. Pabst/

Patrea L. Pabst

Reg. No. 31,284

Date: December 29, 2008

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